Precision Floors, Inc. and its alter egos Millennium Floors, Inc. and Millennium Floorcraft and Floorcoverers Local Union No. 2168, affiliated with New England Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO. Case 1–CA–40141

May 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The General Counsel seeks summary judgment in this case on the ground that the Respondent's answer to the complaint admits all of the factual allegations and expressly does not contest the allegation that its conduct violated Section 8(a)(5) and (1) of the Act. Upon a charge, a first amended charge, and a second amended charge filed by the Union on July 31, October 31, and December 2, 2002, respectively, the General Counsel issued the complaint on December 30, 2002, against Precision Floors, Inc. and its alter egos Millennium Floors, Inc. and Millennium Floorcraft, herein collectively referred to as the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent filed an answer to the complaint on February 6, 2003, stating in pertinent part that it "admit[s] to all of the facts and plead[s] no contest to the charges brought forward."[1]

On March 25, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On March 27, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

As stated above, the Respondent's answer admits all of the factual allegations in the complaint. The Respondent has not raised any defenses and has not responded to the notice to show cause. Accordingly, we find that all material factual allegations of the complaint are true. We therefore grant the General Counsel's Motion for Summary Judgment.[2]

[1] The answer is in letter format, signed by the Respondent's owner, Robert Landini.

[2] *Black Bear Mining, Inc*., 325 NLRB 960 (1998).

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Precision Floors, Inc. (Respondent Precision), a corporation, with an office and place of business in Winchester, Massachusetts, and Respondent Millennium Floors, Inc. (Respondent Millennium), doing business at times as Millennium Floorcraft, a corporation, with an office and place of business in Winchester, Massachusetts, have been engaged in the commercial flooring installation business as contractors in the construction industry. At all material times, Respondent Precision and Respondent Millennium have been affiliated business enterprises with common ownership, management, and supervision; have formulated and administered a common labor policy; have shared common equipment and personnel; have provided services for each other; and have held themselves out to the public as a single integrated business enterprise. About November 7, 2001, Respondent Millennium was established by Respondent Precision as a disguised continuance of the Respondent. Respondent Precision and Respondent Millennium are, and have been at all material times, alter egos and a single employer within the meaning of the Act.

During the calendar year ending December 31, 2001, Respondent Precision, in conducting its business described above, purchased and received at locations within the Commonwealth of Massachusetts goods valued in excess of $50,000 directly from points outside the Commonwealth of Massachusetts. Annually, Respondent Millennium, in conducting its business described above, performs services valued in excess of $50,000 directly to customers located within the Commonwealth of Massachusetts, including Tocci Building Corporation, who are themselves directly engaged in interstate commerce.

The Respondent admits, and we find, that at all material times, Respondent Precision and Respondent Millennium have been employers engaged in commerce within the meaning of Section 2(2),(6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Northeast Flooring Contractors Association (the Association) has been an organization composed of various employers engaged in the flooring installation business. One purpose of the Association is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. About 1998, the Respondent entered into an individual

assent with the Union, which at all times material herein bound the Respondent to the terms and conditions of employment of any collective-bargaining agreement negotiated with various labor organizations, including the Union. About 2001, the Association and the Union negotiated a collective-bargaining agreement (the Association Agreement), effective from October 1, 2001 to August 31, 2005. At all material times, pursuant to the above individual assent, the Respondent has been bound to all of the provisions of the Association Agreement.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees coming within the classifications set forth in the Association Agreement, as provided in Article 1 of the Association Agreement.

About 1998, Respondent Precision, as an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is the above-described Association Agreement. For the period from October 1, 2001 to August 31, 2005, based on Section 9(a) of the Act, the Union is and has been the limited exclusive collective-bargaining representative of the unit.

About February 1, 2002, Respondent Owner Landini notified the Union by letter that Respondent Precision had ceased operations effective December 31, 2001, and that it was repudiating and terminating its Association Agreement with the Union. Since then, the Respondent has withdrawn recognition from the Union as the limited exclusive collective-bargaining representative of the unit and has failed to apply the provisions of the Association Agreement to the operations and unit employees of Respondent Millennium.

About February 6 and July 31, 2002, the Union requested in writing to Respondent Precision that it furnish the Union with the following information for all projects on which Respondent Precision had performed or subcontracted any work since October 1, 2001, and also all projects that Respondent Precision had under contract, but on which work had not yet commenced:

> 1. The name and location of each project, the contractor, owner, or other entity that provided the contract to Precision;
>
> 2. The contractor to whom Precision subcontracted any work; and
>
> 3. The duration of work on the project.

The above information is necessary for and relevant to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit. Respondent Precision has failed and refused to furnish the Union with this requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed to provide requested information to the Union that is necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to provide the information requested by the Union in its letters dated about February 6 and July 31, 2002. Additionally, having found that the Respondent has terminated and repudiated its collective-bargaining agreement (the Association Agreement) with the Union, and failed to apply the provisions of the Association Agreement to the operations and unit employees of Respondent Millennium, we shall order the Respondent to honor the terms and conditions of the Association Agreement expiring on August 31, 2005, and any automatic renewal or extension of it. In addition, we shall order the Respondent to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to pay contractually-required wages and fringe benefits since February 1, 2002. In order to remedy the Respondent's failure to make any contractually-required fringe benefit payments, the Respondent shall be required to make all contractually-required benefit payments or contributions that have not been made since February 1, 2002, including any additional amounts applicable to such delinquent payments in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments or contributions, as set forth in *Kraft*

Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to unit employees shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3]

ORDER

The National Labor Relations Board orders that the Respondent, Precision Floors, Inc. and its alter egos Millennium Floors, Inc. and Millennium Floorcraft, a single employer, Winchester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition during a term of a collective-bargaining agreement from Floorcoverers Local Union No. 2168, affiliated with New England Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO (the Union), as the limited exclusive collective-bargaining representative of the employees in the unit. The unit is:

> All employees coming within the classifications set forth in the Association Agreement, as provided in Article 1 of the Association Agreement.

(b) Terminating and repudiating its October 1, 2001 through August 31, 2005 Association Agreement with the Union and failing and refusing to comply with the terms of that Agreement and any automatic renewal or extension of it.

(c) Failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the October 1, 2001 through August 31, 2005 Association Agreement during the term of that agreement and any automatic renewal or extension of it, including by paying contractually-required wages and fringe benefits.

(b) Make whole the unit employees for any loss of earnings and other benefits incurred as a result of its failure to honor the Association Agreement, and any automatic renewal or extension of it, since February 1, 2002, with interest, as described in the remedy section of this decision.

(c) Make all the contractually-required benefit fund contributions, if any, that have not been made on behalf of unit employees since February 1, 2002, and reimburse unit employees for any expenses ensuing from its failure to make the required payments, in the manner set forth in the remedy section of this decision.

(d) Furnish the Union with the information it requested by letters to Respondent Precision on about February 6 and July 31, 2002.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Winchester, Massachusetts, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 1, 2002.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. May 30, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT withdraw recognition during a term of a collective-bargaining agreement from Floorcoverers Local Union No. 2168, affiliated with New England Regional Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO as the limited exclusive collective-bargaining representative of the employees in the unit. The unit is:

> All employees coming within the classifications set forth in the Association Agreement with the Union, as provided in Article 1 of the Association Agreement.

WE WILL NOT terminate or repudiate our October 1, 2001 through August 31, 2005 Association Agreement with the Union and WE WILL NOT fail and refuse to comply with the terms of that Agreement and any automatic renewal or extension of it.

WE WILL NOT fail or refuse to furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the limited exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the October 1, 2001 through August 31, 2005 Association Agreement during the term of that agreement and any automatic renewal or extension of it, including by paying contractually-required wages and fringe benefits.

WE WILL make whole the unit employees for any loss of earnings and other benefits incurred as a result of our failure to honor the Association Agreement, and any automatic renewal or extension of it, since February 1, 2002, with interest.

WE WILL make all the contractually-required benefit fund contributions, if any, that have not been made on behalf of unit employees since February 1, 2002, and reimburse unit employees for any expenses ensuing from our failure to make the required payments, with interest.

WE WILL furnish the Union with the information it requested by letters to us on about February 6 and July 31, 2002.

PRECISION FLOORS, INC.